

Message

From: Larsen, Brent [Larsen.Brent@epa.gov]
Sent: 1/23/2020 8:57:13 PM
To: Holcomb, Sarah, NMENV [sarah.holcomb@state.nm.us]
CC: Ryland, Renea [Ryland.Renea@epa.gov]; Jahan, Nasim [Jahan.Nasim@epa.gov]
Subject: RE: Navigable Waters Protection Rule

Sarah:

Don't know exactly what will be all the implications on the MS4 Designation, but in final decision RTC I think we said even if immediate waters are not WOTUS, the Rio Grande is....which sounds like the issue about discharges to non-jurisdictional ephemerals that flow to jurisdictional waters.

Also do not know implications on the LANL permits and whether new RP might have to be done.

Sincerely,

Brent Larsen
Chief, Permitting Section (6WQ-PP)
214-665-7523

U.S. Environmental Protection Agency
Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270

From: Holcomb, Sarah, NMENV <sarah.holcomb@state.nm.us>
Sent: Thursday, January 23, 2020 1:45 PM
To: Larsen, Brent <Larsen.Brent@epa.gov>
Subject: RE: Navigable Waters Protection Rule

Thanks, Brent. I haven't had a chance yet to read today but will be doing so soon.

Will this affect the MS4 designation at all?

From: Larsen, Brent <Larsen.Brent@epa.gov>
Sent: Thursday, January 23, 2020 12:19 PM
To: Holcomb, Sarah, NMENV <sarah.holcomb@state.nm.us>
Subject: [EXT] Navigable Waters Protection Rule

Sarah:

New **Navigable Waters Protection Rule** (WOTUS Rule) is out, FR notice to follow but prepublication version is available at <https://www.epa.gov/nwpr/navigable-waters-protection-rule-step-two-revise>

Page 305 of the prepublication version appears to address NPDES discharges to non-jurisdictional ephemerals if the pollutants reach downstream jurisdictional waters.

Because fewer waters and wetlands are federally regulated under this rule relative to the 2019 Rule as implemented, the agencies anticipate that the regulated public would need to prepare fewer CWA permit applications. Additionally, some facilities currently discharging under a CWA section 402 permit may no longer be required to obtain permit coverage under federal law where there is a jurisdictional change to the receiving water and the receiving water does not convey pollutants from a point source to a water of the United States. The agencies note that they retain section 402 permitting authority over discharges that reach jurisdictional waters through conveyances, such as non-jurisdictional waters. In some section 402 permits, water quality-based effluent limitations may be modified, subject to applicable anti-backsliding permit requirements, where a facility discharges to a water that is non-jurisdictional under the final rule, but the pollutants discharged still reach a jurisdictional water.

Sincerely,

Brent Larsen
Chief, Permitting Section (6WQ-PP)
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